

July 15, 2010

Russell Carollo, Journalist
(b)(6)

Re: FOIA Appeal dated June 2, 2010; addendum dated June 11, 2010

Dear Mr. Carollo:

In a letter dated January 23, 2010, you made a Freedom of Information Act (FOIA) request for copies of all databases containing information related in any way to travel by NCUA employees and/or financed by NCUA; your request included travel paid for by other entities, public or private. You requested that responsive records be generated up to the date of the final response. You also requested a record layout (data dictionary) describing all database fields as well as any training/instructional material associated with the database. By letter dated May 20, 2010, Linda Dent, staff attorney in NCUA's Office of General Counsel, granted your request in part and denied it in part, enclosing a CD-Rom containing a database with certain fields on employee travel expense information for 2003 – 2009. The CD you received did not include all fields of information maintained by NCUA; it included city and state, voucher date, expense category, expense description, expense total, and travel year and month. Ms. Dent noted that the entire database includes approximately two million megabytes of information including personal, confidential information and sensitive agency information that may be subject to exemption under the FOIA. The partial denial was due to an unreasonable search request. Ms. Dent also noted that we did not have a data dictionary or training/instructional material. The database provided did not include any information on travel paid for by outside entities.

You submitted an appeal dated June 2, 2010 (received June 7th) and then submitted an addendum to the appeal dated June 11th (received June 16th) once you were able to access the information in the CD. Your June 2nd letter addresses six issues and your June 11th letter addresses four issues; some of the items overlap. On July 2nd Hattie Ulan of this Office spoke to you concerning your appeal. Among other things, you noted that you did not want database information provided in a piecemeal fashion.

This is an interim reply to your appeal. Your appeal is granted in part as explained below. Record layout information is enclosed with this letter. A revised database including information up until the date of the search will be sent once it is compiled by technical staff and reviewed by FOIA staff. You will again receive appeal rights when that additional information is sent.

June 2nd letter

Item 1. You requested a record layout (data dictionary) describing all database fields, including withheld fields as well as any training/instructional material associated with the database. Based on her exchange with staff familiar with the database, Ms. Dent responded that we did not have a data dictionary or training/instructional material for the database. After clarifying to additional staff

familiar with the database that the request included either a data dictionary or record layout, one page was located and identified as a record layout; it is enclosed. We have confirmed that there is no further data dictionary and no training or instructional materials associated with the database.

Items 2 – 4. You requested that we justify each deletion separately by reference to specific FOIA exemptions (including individual computer fields) and asked that all reasonably segregable portions (including field names) be released. We assume your reference to “computer fields” describes the same information as the term “database fields” used earlier in your letter. We will review our denial of database field names once an updated database is generated. Ms. Dent noted that the database contained approximately two million megabytes of information, including exemptible personal confidential information and sensitive agency information. Unfortunately the volume of responsive records was miscommunicated in Ms. Dent’s response. Rather than 2 million megabytes of information, our technical staff estimates that there are 2 million lines of information (or 2 million data processing records of information) in the unredacted database. This part of your request was denied in that it was a request requiring an unreasonable search. Courts have held that an agency must conduct a reasonable search and that the reasonableness of such a search depends upon the facts of each case. Zemansky v. EPA, 767 F.2d 569, 571-73 (9th Cir. 1985). Agencies are not required to conduct unreasonably burdensome searches for records. Solar Sources, Inc. v. United States, 142 F.3d 1033, 1039 (7th Cir. 1998). We estimate that it would take an NCUA employee familiar with FOIA exemptions at least six months of full time work to do a line-by-line review of the 2 million lines of information or data processing records in the unredacted database. Such a review is necessary because employees may have entered information subject to exemption in the fields withheld. Given our limited FOIA resources and the amount and types of requests we receive, we can devote only one to two hours per week to review the information that was requested and withheld. Please contact Ms. Dent after you receive the newly generated database if you wish to pursue this option.

Item 5. This item concerned format of the data you received. According to your June 11th letter, this issue has been resolved.

Item 6. Your request included database information on travel paid for by entities other than NCUA, both public or private. It is NCUA’s longstanding policy not to accept payments for travel from any other entities, public or private; hence there are no responsive records to this part of your request.

June 11th letter

Item 1. You state that the names of individual travelers were not provided in the database you received. After receipt of your request, Ms. Dent spoke with you to clarify exactly what type of information you were requesting. It was her understanding that you were not interested in the names of individual travelers. Prior to providing you with a new database we will determine whether the names of the individual travelers will be included.

Item 2. You note that numerous fields were left out of the database you received without explanation; you also again request that a specific FOIA exemption be noted for each deletion. These issues are addressed above. You again request a data dictionary and any

training/instructional materials. As noted above, the record layout information is enclosed. In your conversation with Ms. Ulan, you clarified that you wanted the original "relational database" from which the flat table database that you received was created. We cannot provide you with our relational database. The size of the relational database is approximately 46 gigabytes; it is much larger than the database provided and it presents a clearly unreasonable search request, as discussed above.

Item 3. You argue that your request does not present an unreasonable burden. This issue is addressed above.

Item 4. You requested records generated up to the date of our final response. We provided records from 2003 – 2009; Ms. Dent's response was dated May 20, 2010. Courts have held that a "date of search" cutoff date rather than a "date of release" cutoff date is a reasonable one. Edmonds Inst. v. US. Department of the Interior, 383 F. Supp. 2d 105,110-11 (D.D.C. 2005). The new database that will be provided will include information up until the "date of search." It is not reasonable to include information up to the "date of release." Technical staff outside of NCUA's FOIA Office is responsible for generating the database. There will always be some time lag between when this type of information is generated (date of search) and the appropriate FOIA response can be prepared and released (date of release).

Pursuant to 5 U.S.C. 552(a)(4)(B) of the FOIA, you may seek judicial review of this determination by filing suit against the NCUA. Such a suit may be filed in the United States District Court where you reside, where your principal place of business is located, the District of Columbia, or where the documents are located (the Eastern District of Virginia).

As discussed with Ms. Ulan, once the new database is generated and a decision is made on any additional release of field names and individual traveler names, we will send you our final response with the new database enclosed, along with your appeal rights for the final release.

Sincerely,

Robert M. Fenner
General Counsel

Enclosure

GC/HMU:bhs
10-0627
10-FOI-00049